

## Message

**From:** Wooden-Aguilar, Helena [Wooden-Aguilar.Helena@epa.gov]  
**Sent:** 7/18/2014 1:05:37 AM  
**To:** Rhodes, Julia [Rhodes.Julia@epa.gov]; Golightly-Howell, Velveta [Golightly-Howell.Velveta@epa.gov]; Johnson, Ken [Johnson.Ken@epa.gov] [Ex. 6 Personal Privacy (PP)]  
**CC:** Gsell, Alyssa [Gsell.Alyssa@epa.gov]  
**Subject:** Re: concerns about the Arrowhead trip

Julia et al,

I have to say that I do agree with all of Julia's observations and concerns. As someone that has lead a investigation and interviewed multiple parties in-person/telephonically I agree with Julia that the team needs more time to get up to speed, bring me up to speed, and prepare for pre-interviews and in-person. However, with all the competing priorities there is simply not enough time to prepare and really focus on the issues, the evidence, and appropriate coordination with EJ/Region 4/OGC.

The investigation lacks a seasoned lead and unfortunately I am pulled in too many directions to keep them on a weekly schedule. Thus, after participating in several team meeting and assessing the status of the team I recommend the following:

1. I meet with them weekly.
2. I recommend we convene a "Case" meeting with John R, R4, OEJ, OECA, OSWER, OGC, and OCR (as we did w/ the ADR mtg) to discuss the resources needed for the investigation/listening session. I strongly recommend that we have a Regional program person (RCRA/ORC) devoted to this case at least 30-50% of their time.
3. I can lead the OCR team and have Jeryl/Brittany co-lead it. We will focus on the IP and drafting interview questions/scripts/etc.  
We will work closely w/ OGC.
4. We will not be able to travel in July as I, nor the team, will be ready.
5. I will recommend that we interview the end of August. Until then we will conduct pre-interviews, follow-up with the non-complainants Earth justice has identified, and prepare for the in-person interview.

Regarding the listening session, I would recommend that we hold this separately and broaden the EPA participants (OEJ/OECA/RCRA/etc.). I think it should be senior officials and it should be recorded. We could also invite other federal agencies if appropriate.

Recommend an internal mtg w/ Velveta and Ken next week.

Helena

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[Ex. 6 Personal Privacy (PP)]

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**From:** Rhodes, Julia  
**Sent:** Thursday, July 17, 2014 5:53:21 PM  
**To:** Golightly-Howell, Velveta; Johnson, Ken; Wooden-Aguilar, Helena  
**Cc:** Gsell, Alyssa  
**Subject:** concerns about the Arrowhead trip

I understand that OCR has advised EarthJustice that it intends to interview Complainants this month. At the same time, I feel as if the OCR staff has been pulled in too many other directions based on the need to address other office priorities, including the ECOS and DCRO meeting, the 50<sup>th</sup> anniversary events, the Angelita C FOIA, the CIR/CPI FOIAs and the SORN as well as T6 regulatory amendments, to have had adequate time to prepare for this event. As a result of these other priorities, OCR is not as prepared for this trip as it otherwise would have been and it is not clear to me what the plan is to get this matter back on track.

CRPG has sent several emails, well before and after Jim's detail ended, to the Arrowhead team identifying issues that should be addressed before the proposed interviews occurred. For instance, as previously mentioned the draft IP currently only details what actions have occurred, but does not appear in a format that will provide a detailed outline for an investigative report. As a result, the current draft IP that was shared with CRFLO does not contain summaries of what OCR has in its files to date, including facts from the complaint and its numerous attachments; the response from ADEM; information from the Regional Office about prior enforcement action taken with respect to the facility and prior listening sessions with the community; and press coverage. In addition, no documentation has been presented to CRFLO for review that clearly identifies what factual evidence OCR does NOT have (but needs). Without such information, it is difficult to assess the propriety of broad draft interview questions, and will be difficult to ask appropriate follow-up questions during interviews or to respond to questions from complainants during the interviews.

Additionally, as you know, there are a thousand micro-tasks associated with conducting a successful interview, as well as listening session. Some of those details that still have not been hammered out include:

#### Pre-interview Telephone Calls:

- Calls have not been scheduled. Complainants may not even know that they will be asked to call in next week to provide preliminary information.
- It is unclear what time the calls will occur and whether we are expecting staff to work in the evening which has budgetary implications for the agency unless we can alter folks' schedules.

#### Interviews:

- The list of interviewees needs to be finalized. Is OCR interviewing complainants and/or other interested community members (as suggested by Earth Justice)? What is the limit on how many individuals can proffer for interviewing? How will it be communicated that only non duplicative/non repetitive testimony is needed beyond the statements of the complainants? Has OCR create a SOP to avoid being a situation that in every case the agency allows complainant's representative to control the scope of the investigation?
- The questions for interviews needs to be drafted (some of that may already be done) and reviewed by OCR management and by CRFLO.
- When possible, the interview questions need to be tailored to the specific complainant. (i.e., no need to ask about certain impact if that complainant has indicated in pre-interview or in the material already in OCR's records that it doesn't apply to him/her.)
- Files/binders need to be made for each interviewee. This can be started based on Marianne's list.
- Time and place for each interview need to be determined and confirmed. Where will the interviews take place?
- Tape recorder or stenographer need to be secured. If tape recorder, what are the expectations for how and when the recording will be transcribed? It should be anticipated that EarthJustice will ask how it can get copies of the transcript, so OCR needs to think about how it wants to-respond.
- Need script for the interviewers that makes clear that the lawyers are there as observers to answer questions from their clients during breaks, but that this is an interview that OCR is conducting. Generally, the role of each person in the interview should be defined.
- How long will each interview take?

#### "Expert Witnesses":

- Medical Doctor Ex. 6 Personal Privacy (PP)
  - CV needs to be sent to OCR.
  - Questions for the doctor need to be drafted, including his expertise in this field.
  - Signed medical waivers need to be secured before talking about any patient-complainant.
  - Time and place need to be confirmed for interviewing the doctor.
- Scientist Ex. 6 Personal Privacy (PP)
  - OCR needs to secure a subject matter expert who can evaluate her report.
  - Unlikely to happen before 7/31, so OCR should decline invitation to speak with her (at least for now).

Public Meeting:

- Are other EPA offices (R4, OEJ, Administrator's Office) comfortable with OCR attending/holding a public meeting? Even if it is labeled a "listening session"? OCR will have to respond in some way to what is voiced at the listening session. What will those talking points be?
- If it does occur: who from EPA will attend? And what role will they play?
- What is the response to press, if present? How long will the meeting be? What format? Will it be recorded? Who will moderate?

Tour of the Facility:

- Having non-OECA investigators tour a facility has legal risks. Has OCR reached out to Larry Starfield and Ken Lapierre to see if a multimedia enforcement person is available to tour the facility at the same time or shortly after the OCR interviews?
- Will EPA participate in a tour of the neighborhood? If so, so what does this mean? And all logistics need to be worked out and finalized.

Logistics:

- Hotel, air, rental car all need to be reserved.
- How long will the trip be and what are the dates?

I am sending this message because I am a list maker and wanted to try to capture the questions in different emails in one place in an effort to assist the team on focusing on answers to the questions because there is less than one week when EarthJustice expects us to arrive.

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